

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

THOMAS WELLS AND WANDA WELLS,)
and MICHAEL DAWSON and BONNIE)
DAWSON, and ISLAND COUNTY,)

Appellants,)

v.)

STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)

Respondent,)

and)

GRACE DONHAM and BRUCE R. and)
JILL REED, and ALICE NEWLIN,)

Intervenors.)

SHB No. 90-10
FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter came on for hearing before the Shorelines Hearings Board, Annette McGee, Harold S. Zimmerman, Richard S. Gidley, Nancy Burnett, and Michael Gibson, members, convened at Coupeville, Washington on May 30 and 31, 1991.

William A. Harrison, Administrative Appeals Judge, presided.

Appellants Thomas and Wanda Wells appeared by John R. Praeger, Attorney at Law. Appellants Michael and Bonnie Dawson appeared *pro se* by Bonnie Dawson. Respondent Washington State Department of Ecology appeared by Allen T. Miller, Jr., Assistant Attorney General. Intervenor Grace Donham appeared through her son, Andrew Donham, and Intervenors Reed and Newlin appeared through their attorney,

1 J. Richard Aramburu. Court Reporter D.J. Stults recorded
2 the proceedings.

3 Witnesses were sworn and testified. Exhibits were
4 admitted and examined. From testimony heard and exhibits
5 examined, the Shorelines Hearings Board makes these

6 FINDINGS OF FACT

7 1.

8 This matter arises on the shore of Useless Bay, in the
9 vicinity of Double Bluff in Island County.

10 2.

11 The site in question is adjacent to and generally
12 southwest of the end of Double Bluff Road. It is part of
13 lands originally patented by the United States to one
14 William T. Johnson in 1875.

15 3.

16 Approximately 50 years ago, in the late 1930s and early
17 1940s, three cabins or beach houses were constructed along
18 the shoreline up against a steep bluff which rises above the
19 flat beach area. The most northerly residence is now owned
20 by the Appellants Wells, the most southerly residence is now
21 owned by the Intervenor Donham, and the residence in between
22 is now owned by the Appellants Dawson. On the Wells
23 property a walkway/ramp extends from their boathouse into
24 the beach vegetation. Likewise, on the Dawson property a
25 rail ramp extends from their boathouse into the vegetated
26 area of the beach.

27 FINAL FINDINGS OF FACT,
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1 4.

2 The three cabins are not currently accessible by
3 vehicular traffic. A pedestrian boardwalk of cedar planking
4 was constructed along the toe of the bluff in the 1940s.
5 The pedestrian trail runs from the end of Double Bluff Road
6 through three undeveloped lots located north of the Wells,
7 Dawson and Donham residences. The three undeveloped lots
8 are owned by Intervenor Reed and Newlin. The two parcels
9 closest to the end of Double Bluff Road are owned by the
10 Reed/Newlin family and the third parcel adjacent to the
11 Wells property is owned individually by Mr. Reed.

12 5.

13 All six shoreline properties contain portions of a sand
14 beach covered by either salt-sensitive or salt-tolerant
15 plant species and grasses and driftwood. All of the parcels
16 also contain a portion of the steep bluff. The flat sand
17 beach area in front of the bluff widens significantly as it
18 moves southwesterly toward Double Bluff. Areas of the beach
19 consist of sand dunes and swales. The shoreline has a high
20 aesthetic value as a natural grassy/sand dune beach.

21 6.

22 A line of demarcation between two salt-sensitive upland
23 plant species, European Beachgrass and Giant Vetch, and two
24 wetland salt-tolerant plant species, Pickleweed and
25 Goosefoot, is distinguishable. This line of demarcation
26 between the salt-sensitive and salt-tolerant plant species

1 is also consistent with the line of recent drift material
2 and soil erosion left by the action of the tides. This line
3 was marked by pink wands by the Department of Ecology.

4 7.

5 The associated tidelands below the mean high tide line
6 are not owned by the owners of the upland parcels. They are
7 state-owned and are heavily used for recreational purposes
8 by local residents. The driftwood beach area is utilized
9 for beach fires by members of the public. On June 4, 1989
10 one of these beach fires in front of the Donham parcel got
11 out of control and spread over a large area of the beach.
12 The firefighters had difficulty in putting out the blaze
13 because of the lack of vehicular access to the properties.
14 This fire resulted in the request for a shoreline permit to
15 build a road, which would provide access for fire apparatus
16 and emergency vehicles and access to residential properties
17 in the future.

18 8.

19 Appellants Wells and Dawson applied for a shoreline
20 conditional use permit to allow construction of a 12 to 14
21 foot wide gravel surface road to provide private and
22 emergency vehicle access to their existing single-family
23 residences. The proposed road would be constructed in a
24 southwesterly direction commencing at or near the south end
25 of Double Bluff Road. The road would be constructed
26 pursuant to a recorded easement, but not necessarily at the

1 location of the easement, appurtenant to the Wells and
2 Dawson properties that crosses the two
3 parcels owned by Reed/Newlin and the third parcel owned by
4 Reed, individually. Intervenor Donham was not originally an
5 applicant for the permit, but has entered this case and has
6 asked the Board for a permit which would allow the road to
7 service her residence beyond the Dawson property.
8 Mrs. Donham's property is not benefitted by the recorded
9 easement.

10 9.

11 The Island County Shoreline Master Program (ICSMP) at
12 Map #29 designates the subject shoreline area as a Natural
13 Environment. The ICSMP, including Map #29, was approved by
14 the Department of Ecology on June 25, 1976. WAC
15 173-19-230.

16 Aerial photographs kept in the files of the Island
17 County Planning Department and referenced in the ICSMP
18 depict the subject shoreline as Conservancy Environment.
19 The Board finds that the aerial photographs were never
20 submitted to the Department of Ecology for its approval at
21 any time.

22 10.

23 The Island County Hearing Examiner granted a condi-
24 tional use permit to the Wells and Dawsons for the road
25 under certain specific conditions. The permit was sent to
26 the Department of Ecology on December 15, 1989. Thirty-two

1 days later, on January 16, 1990, the Department of Ecology
2 issued a letter denying the conditional use permit for the
3 road, and this appeal timely followed.

4 11.

5 After several meetings with the parties, and after
6 Intervenor Donham, Reed and Newlin entered the case, the
7 Department of Ecology changed its original position of
8 denial and would conditionally approve the permit with the
9 alignment of the road as depicted on Exhibit R-9.

10 12.

11 Construction of an access road anywhere on this beach
12 will have a negative impact on the natural beauty of the
13 area. The Department of Ecology takes the position that the
14 proposed access road be approved, but be located at the toe
15 of the steep bluff along the alignment of the current
16 pedestrian boardwalk. The Department of Ecology believes
17 that this location will result in the least negative impact
18 on the natural features of this basically undisturbed beach
19 ecosystem.

20 13.

21 Intervenor Reed and Newlin oppose the location of the
22 access road at the toe of the bluff. The Reed/Newlins are
23 concerned about restrictions on their ability to develop or
24 use their property in the
25 future should the roadway be located at the toe of the
26 bluff. The Board specifically makes no finding as to

1 whether a shoreline permit should be issued for any future
2 development on the Reed property or the Reed/Newlin
3 properties. The Board also specifically makes no finding as
4 to the location of the recorded easement and whether or not
5 the road as permitted falls within that easement.

6 14.

7 Whether the road is placed at the toe of the bluff or
8 slightly waterward, it will displace an equal amount of
9 natural native salt-tolerant vegetation growing in the
10 area. The difference in the disruption to the natural beach
11 ecosystem from the road as proposed by the Department of
12 Ecology and as permitted by Island County is negligible.

13 15.

14 The Board finds that the road as approved by the
15 Department of Ecology on the property of the Wells, Dawsons
16 and Donhams, and the road as approved by Island County
17 through the Reed/Newlin properties will not have a
18 significant adverse environmental impact either upon
19 wildlife, or upon plant species, or aesthetically, or with
20 regard to maintenance. We find further that there will be
21 no adverse cumulative effects owing to the establishment of
22 the proposed road.

23 16.

24 Any conclusion of law deemed to be a finding of fact is
25 hereby adopted as such.

26 From these findings of fact, the Board comes to these

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
SHB NO. 90-10

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1 adopted or approved by the Department as appropriate.
2 Within the time period provided in RCW 90.58.080, each local
3 government shall have submitted a master program, either
4 totally or by segments, for all shorelines of the state
5 within its jurisdiction to the Department for review and
6 approval. Island County did not submit its aerial
7 photographs. The reference contained in the Master Program
8 cannot serve as a substitute for the actual submission of
9 the photographs, as to do so would avoid the public notice
10 and public informational purpose served in centralizing
11 shoreline master programs in the hands of the State
12 Department of Ecology.

13 3.

14 We conclude that the controlling environment as adopted
15 by Island County for the site in question is Natural, which
16 is the environment provided within the Master Program Map
17 #29. With regard to that designation, we conclude the
18 Department of Ecology guidelines at ch. 173-16 WAC are
19 consistent with that designation. We conclude that the
20 designation of this area as a Natural Environment is
21 reasonably consistent with the Department of Ecology
22 guidelines for master programs.

23 4.

24 We conclude that because the proposed development
25 consists of a roadway that will serve a number of homes,
26 this takes the proposed development out of the permit

1 exemption for a driveway appurtenant to a single-family
2 home. WAC 173-14-040(g). We conclude that the proposed
3 development is a vehicular access route, which under the
4 Island County Shoreline Master Program is a conditional use
5 as provided at § 16.21.035(A)(3). As such, the roadway is a
6 use which is classified or set forth in the Master Program
7 as a conditional use and it is subject to the criteria of
8 WAC 173-14-140(1).

9 5.

10 We review the proposed development for consistency with
11 the Shoreline Management Act and the Island County Shoreline
12 Master Program. See RCW 90.58.140(2)(b). We have carefully
13 considered the policy of the Shoreline Management Act in RCW
14 90.58.020 to bring coordinated planning to the shoreline and
15 have endeavored to apply that requirement and the policy of
16 the Act to the situation. We conclude that the road
17 alignment differs amongst the parties primarily on the
18 property of the Reeds. To the extent that there is any
19 difference amongst the parties on the properties of the
20 Wells, Dawsons and Donhams, we resolve that difference with
21 regard to the Wells, Dawson and Donham properties in keeping
22 with Exhibit R-9, which allows a road alignment waterward of
23 the end of the walkway ramp on the Wells property and the
24 marine railway ramp on the Dawson property. As to the
25 alignment of the road on the Reed/Newlin and Reed
26 properties, we conclude that the road as permitted by Island

1 County would not have a significant adverse environmental
2 impact either upon wildlife, or upon plant species, or
3 aesthetically, or with regard to maintenance.

4 6.

5 We conclude that the alignment of the roadway described
6 in Conclusion of Law 5 is consistent with the review
7 criteria for conditional use permits at WAC 173-14-140(1),
8 and we conclude that the roadway in this alignment is
9 consistent with the policies of RCW 90.58.020 and the
10 policies of the ICSMP. We conclude that the roadway will
11 not interfere with the normal public use of public
12 shorelines, that the roadway is compatible with other
13 permitted uses within the area, that the roadway will cause
14 no unreasonably adverse effects to the Natural shoreline
15 Environment in which it is to be located, and that the
16 roadway, as conditioned in the following Order, is
17 consistent with the public interest as long as nowhere on
18 the length of the road shall the road be waterward of the
19 vegetation line established by the Department of Ecology,
20 which we conclude to be the true ordinary high water mark as
21 that term is defined in the Shoreline Management Act. RCW
22 90.58.030(2)(b).

23 7.

24 Any finding of fact deemed to be a conclusion of law is
25 hereby adopted as such.

26 From these conclusions of law, the Board enters this

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5. During construction every care shall be taken to minimize erosion by removing as little vegetation as possible; replacing any vegetation that is lost; and inspecting the site immediately after construction to make sure the site is revegetated.


1 6. The permittees are required to notify Island County
2 of any artifacts that are uncovered during excavation or
3 construction.


4 7. Construction activity shall be limited to the
5 roadway bed. No grading or placement of excavated material
6 shall take place outside of the roadway bed.

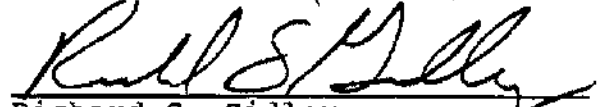
7 8. Sidecasting or deposition of any materials below
8 the ordinary high water mark is prohibited.


9 9. The permittees recognize that the bluff is
10 considered unstable and subject to periodic failure.
11 Issuance of the permit does not guarantee stability of the
12 slope and the permittees assume the risk of damages from any
13 such failure.

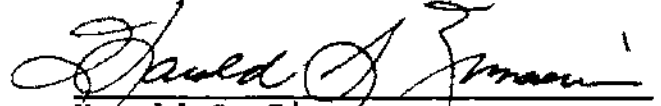
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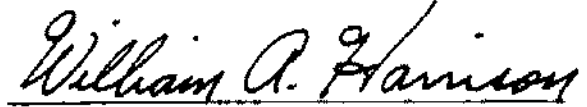

Nancy Burnett


Michael Gibson


Richard S. Gidley


Annette McGee


Harold S. Zimmerman


WILLIAM A. HARRISON
Administrative Appeals Judge

DONE this 2nd day of August, 1991